

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-CR-80219-CANNON

UNITED STATES OF AMERICA,

Plaintiff,
vs.

MICHAEL DOUGLAS

Defendant.

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**RESPONSE TO GOVERNMENT’S OBJECTIONS
TO PRESENTENCE INVESTIGATION REPORT**

Section 2G2.2(b)(3)(E) provides for a seven-level increase where “the offense involved the distribution of child pornography *to a minor* that was intended to persuade, induce, entice, coerce, or facilitate the travel of the minor to engage in prohibited sexual conduct.” USSG § 2G2.2(b)(3)(E) (emphasis added). Though the guideline language is unambiguous – the distribution must be “to a minor” – the government argues the commentary expands the definition of “minor” to include fictitious minors. Gov’t Obj. at 4; *See* USSG § 2G2.2, app. n. 1. However, this Court may not look to the commentary to expand the meaning of an unambiguous guideline. *United States v. Dupree*, 57 F.4th 1269, 1273-77 (11th Cir. 2023). Here, Mr. Douglas distributed only to an adult undercover agent and thus, under the

plain language of the guideline, the increase does not apply.

Respectfully submitted,

HECTOR DOPICO
FEDERAL PUBLIC DEFENDER

s/Scott Berry

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CERTIFICATE OF SERVICE

I HEREBY certify that on August 12, 2025, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or *pro se* parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: s/Scott Berry
Scott Berry